REMARKS

Applicant appreciates the time taken by the Examiner to carefully review the present application. At the time of the Office Action mailed May 12, 2006, Claims 40-44 and 54-71 were pending in this Application and were rejected. Claims 40, 60, 62, 63 and 67 have been amended. Claims 57 and 71 have been cancelled without prejudice or disclaimer. New Claims 72 and 73 have been added. Applicant respectfully requests reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 112

Claims 40-44 and 54-71 were rejected under 35 U.S.C. 112 as failing to comply with the written description requirement. Claims 57 and 71 have been cancelled without prejudice or disclaimer. Applicants submit that the Amendments to Claims 40, 60, 62, 63 and 67 overcome the rejections under §112. Applicant requests reconsideration and favorable action.

Rejections under 35 U.S.C. § 102

Claims 62, 64, 65, 68 and 69 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,258,028 granted to Ersek et al. ("Ersek"). Applicant respectfully traverses.

Ersek discloses textured micro particles for implantation into an implant site within a body. See abstract. The micro particles may be delivered to the implant site through a hypodermic needle utilizing an "appropriate physiologic vehicle". See Col. 2, lines 43-47 and Col. 10, lines 11-15. As contemplated by Ersek, such vehicles are "removed or metabolized" following delivery of the micro particles. Following implantation, the physiologic vehicle is removed or metabolized and scar tissue is formed around irregularities and indentations on the micro particles, thereby anchoring them where deposited. See Col. 9, lines 38-47.

Independent Claim 62 recites an injectable composition including "a flowable matrix" and a radiopaque tracer particles present in an amount "sufficient to be individually visible during implantation to visually indicate flow of the matrix during implantation."

The office action cites to the particle size ranges of Ersek and states, "inherently Ersek's particles are individually visible, since they are the same size as the applicant's particles,

therefore, would have been just as visible as the applicant's particles." Applicant traverses. The above limitation requires a concentration of tracer particles that is sufficiently low, such that individual particles may be viewed. If the concentration of tracers particles is too high, particles will overlap and the radiopaque particles will not be individually visible. If this occurs, the injectable composition will have relatively uniform or homogeneous composition individual particles (and flow of the composition as a whole) will not be discernable. The fact that Ersek contemplates particles in a given size range is not sufficient to anticipate the above limitation. Moreover, because implantation of the particles progresses more quickly after the physiologic vehicle is consumed or metabolized by the body, one of skill in the art utilizing Ersek would logically utilize a relative high concentration of micro particles. Accordingly, Ersek does not disclose, teach or suggest including particles in a concentration such that the particles are individually viewable.

Further, the office action cites to the physiologic vehicle of Ersek as teaching a flowable matrix. As a general matter, Applicant submits that there is no disclosure, teaching or suggestion within Ersek that the physiologic vehicle is a matrix as contemplated by the present disclosure. To the contrary, the only matrix contemplated by Ersek is that produced by the host subject after the physiologic vehicle is consumed. See Col. 8, lines 8-25. Specifically, with respect to Claim 64 the office action cites to the following sentence to argue that that Ersek teaches the use of collagen or polymer matrix materials: "Additionally, polyvinylpyrrolidone (Plasdones), hyaluronate, collagen and other biocompatible substances may be incorporated into the elastomer or combined with its surface." Because these materials are directed to be "incorporated into the elastomer or combined with its surface", Applicant submits that the cited portion is clearly directed to using the above materials with respect to the micro particles, not the physiologic vehicle.

Accordingly, Applicants submit that Ersek fails to disclose, teach or suggest each and every limitation of Independent Claim 62. Applicant requests reconsideration, withdrawal of the rejections under §102 and full allowance of Claims 62, 64, 65, 68 and 69 which depend therefrom.

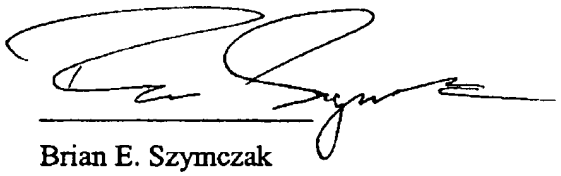
New Claims

Applicants submit that New Claims 72 and 73 do not introduce new subject matter. For example, the limitations of Claim 72 were contained in previously submitted Claim 67. The materials limitations of Claim 73 are contained Claims 64 and 65.

## CONCLUSION

Applicant has made a sincere effort to address all issues raised in the Office Action. If the Examiner believes a telephone conference would expedite prosecution of this application, a telephone call to the undersigned attorney at the number listed below will be appreciated.

Respectfully submitted,



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